INDEX

TO THE

PRINCIPAL MATTERS

CONTAINED IN THIS VOLUME.

ABSENT DEBTOR.

UPON an attachment in chancery, under the laws of Virginia, if the record ſtates that "*I. T. in open court, became ſecurity that I. H.* (the abſent debtor) "ſhall perform the "*decree of this court, if againſt him*," *quere*, whether an action of debt will lie againſt I. T. for the amount decreed againſt I. H.
Thompſon v. Jameſon, - 282

ACKNOWLEDGMENT.

A *deed* of lands, in Maryland, ſigned, ſealed and delivered on the 30*th of May* and acknowledged on the 14*th of June*, is to be conſidered as made on the 30*th of May*; and its acknowledgment on the 14*th of June* will not cauſe it to be ſuch a deed as is contemplated in the *bankrupt act*, which came into operation on the 2*d of June* 1800.
Wood v. Owings, - 239

ACT OF GOD.

What ſhall be ſaid to be the act of God, and what *inevitable caſualty*?
Hodgſon v. Dexter, - 345

ACTION.

1. In Virginia it is not always neceſſary to ſue the maker of a promiſſory note, to entitle the holder to an action againſt the indorſer.
Clark v. Young, - - 181
2. If a promiſſory note of a third perſon be indorſed, by the purchaſer of goods, to the vender, as a conditional payment for the goods, *Quere*, whether the vender is, *in any caſe*, obliged to *ſue* the *maker* of the note before he can reſort to the purchaſer of the goods on the original contract of ſale?
Clark v. Young, - - 193
3. A ſuit againſt the defendant as *indorſer of the note*, and a ſuit againſt him *for the goods ſold*, are upon diſtinct and different cauſes of action; and the firſt can not be pleaded in bar of the ſecond. *Ib.* - 193
4. It is not neceſſary for the plaintiff to offer to return *the note*, to entitle him to an action for the *goods ſold*. *ib.* - - - 194
5. In Virginia, an action will not lie by the holder againſt a remote indorſer of a promiſſory note.
Mandeville v. Riddle, - - 290
6. *Quere*, whether the holder of a promiſſory note in Virginia, can not maintain an action *for money had and received*, againſt a remote indorſer? *Dunlop v. Silver*, 367
7. Can he, *for whoſe benefit* a promiſe is made to a third perſon, maintain an action againſt the promiſor? *Ib.* - - - 429

8. Letters of adminiſtration from the orphan's court in the diſtrict of Columbia, are neceſſary to enable an adminiſtrator to maintain an action in the courts of the diſtrict. *Fenwick v. Sears*, - 259

ADMINISTRATOR.

An adminiſtrator, having had letters of adminiſtration in Maryland, before the ſeparation of the diſtrict of Columbia from the original ſtates, cannot, after that ſeparation, maintain an action in that part of the diſtrict ceded by Maryland, by virtue of thoſe letters of adminiſtration, but muſt take out new letters within the diſtrict. *Fenwick* v. *Sears*, 259

ADMIRALTY.

1. Salvage allowed to a ſhip of war of the United States for the re-capture of a *Hamburgh* veſſel out of the hands of the *French (France and Hamburgh being neutral to each other)* on the ground that ſhe was in danger of condemnation under the French arret of 18 January, 1798. *Talbot* v. *Seeman*, - - 1
2. To ſupport a demand for ſalvage, the re-capture muſt be *lawful*, and a meritorious ſervice muſt be rendered. *Id.* - - - 28
3. *Probable cauſe* is ſufficient to render the re-capture lawful. *Id.* 31
4. Where the amount of ſalvage is not regulated by poſitive law, it muſt be determined by principles of general law. *Id.* - 44
5. Marine ordinances of foreign countries, promulgated by the executive by order of the legiſlature of the United States, may be read in the courts of the United States without further authentication or proof. *Quere*, whether they may not be read without ſuch promulgation? *Id.* - - 38
6. Municipal laws of foreign countries are generally to be proved as facts. *Talbot* v. *Seeman*, 38
7. To entitle to ſalvage, in caſes of re-capture, it is not neceſſary that the means uſed ſhould be with that ſole view. *Id.* - 36, 41
8. The rule that ſalvage is not due for the re-capture of a *neutral*, is founded on the *fact*, that no benefit has been conferred. *Id.* 37
9. To entitle to ſalvage, it is not neceſſary that the deſtruction of the thing would have been *inevitable*, but for the means uſed to ſave it; but the danger muſt be real and imminent. *Id.* 42, 43
10. Salvage does not imply a *contract*. *Id.* - - - 42, 43
11. France and the United States were in a ſtate of partial war in the year 1799. *Id.* - 31
12. The ſupreme court of the United States, in caſes of appeal, and on writs of error, are limited to the ſtatement of facts made in the court below. *Id.* - 38
13. A final condemnation in an *inferior* court of admiralty, where a right of appeal exiſts and has been claimed, is not a *definitive* condemnation, within the meaning of the 4th article of the convention with France, ſigned September 30, 1800.

AGENT, PUBLIC.

A public agent of government, contracting for the uſe of government, is not *perſonally* liable, *although the contract be under his ſeal.* *Hodgſon* v. *Dexter*, - 345

APPEAL.

See Admiralty, 12, 13. *Practice*, 12, 13, 14, 15. *Error*, 1, 4, 5, 6, 7. *Juriſdiction*, 3, 4, 5.

1. No appeal or writ of error lies from the courts of the Territory north-weſt of the river Ohio. *Clarke* v. *Bazadone*, - 212
2. Upon appeal, in chancery caſes, a ſtatement of facts muſt accompany the tranſcript of the record. This proviſion was revived by the repeal of the judiciary act of February 13, 1801. *U. S.* v. *Hooe*, - - 318

APPOINTMENT TO OFFICE.

See Mandamus, 5, 6, 7, 9, 11, 12, 13, 14.

ASSIGNMENT.

See Choſe in Action.

ASSUMPSIT.

See bills of exchange and promiſſory notes, 1, 2, 3, 4, 12, 13, 15, 16, 17, 18, 19, 22, 23.
1. *Aſſumpſit*, for money had and received, will not lie by the holder againſt a remote indorſer of a promiſſory note, in Virginia. *Mandeville* v. *Riddle*, - 290
2. Quere? *Dunlop* v. *Silver*, 367
3. *Aſſumpſit* will not lie upon a policy of inſurance under the *corporate ſeal*, unleſs a new conſideration be averred. *Inſurance Co. of Alexandria* v. *Young*, - - 332
4. Quere, whether an aggregate corporation can make an *expreſs aſſumpſit* unleſs ſpecially authorized by ſtatute? - - *ib.*
5. After verdict, every *aſſumpſit* laid in the declaration is to be taken as an *expreſs aſſumpſit*. *Ib.* 341
6. Quere, whether he, *for whoſe benefit* a promiſe is made, may maintain an action againſt the promiſor? *Appendix*, - - - 429
7. Is *privity* neceſſary to ſupport *indebitatus aſſumpſit* for money had and received? *Appendix*, - 469
8. A judgment in *aſſumpſit* upon a policy under ſeal is a bar to a ſubſequent action of *covenant*, on the ſame policy. *Inſurance Co. Alexandria* v. *Young*, - - 340

ATTACHMENT.

See abſent debtor.

ATTORNIES.

Requiſites to their admiſſion to practice. *Rules of Court*, - xv
Oath to be taken. *Ib.* *ib.*
Shall not practice as counſellors. *Ib.* - - - *ib.*
Counſellors may be admitted to practice as attornies. *Ib.* xvii

BANKRUPT.

See acknowledgment.

BILLS OF EXCHANGE AND PROMISSORY NOTES.

1. In Virginia it is not neceſſary, in all caſes, to ſue the maker of a promiſſory note to entitle the holder to an action againſt the indorſer. *Clark* v. *Young*, - - 181
2. If a promiſſory note of a third perſon be indorſed by the purchaſer of goods to the vender, as a conditional payment for the goods, Quere, whether the vender is, in any caſe, obliged to ſue the maker of the note before he can reſort to the purchaſer of the goods on the original contract of ſale. *Ib.* - - 181
3. A ſuit againſt the defendant *as indorſer of the note*, and a ſuit againſt the defendant *for the goods ſold*, are upon diſtinct and different cauſes of action; and the firſt can not be pleaded in bar of the ſecond. *ib.*
4. It is not neceſſary for the plaintiff to offer to return the note, to en-

title him to bring ſuit for the goods ſold. *ib.*

5. A declaration in *debt*, upon a foreign proteſted bill of exchange, for the principal, intereſt, damages and *coſts of proteſt*, under the act of aſſembly of Virginia, muſt aver the *amount* of thoſe *coſts of proteſt*.
Willon v. *Lenax*. 195

6. Quere, whether the indorſer is diſcharged, if, after due notice to ſuch indorſer of non-payment by the drawee, the holder charge the bill in account current againſt the drawer, and upon the whole of that account the balance due is leſs than the amount of the bill? *ib.*

7. Whether the indorſer, after due notice, is diſcharged by the holder's receipt of part of the money from the drawer? *ib.*

8. Whether it is neceſſary to aver a proteſt for *non-acceptance*, in an action on proteſt for non payment? *ib.*

9. Whether the *drawer* is a competent witneſs for the *indorſer*, in an action againſt the latter.* *ib.*

10. Whether proteſt for non-payment of a foreign bill of exchange muſt be made *on* the laſt day of grace.
Fenwick v. *Sears*, 260

11. Whether the *reaſonableneſs* of notice be matter of *fact*, or matter of *law*. *id.* *ib.*

12. Whether, on the count *for money had and received*, notice of non-acceptance and of non payment, be neceſſary to charge an indorſer who knew, at the time of indorſing, that the drawer had no right to draw. *id.* *ib.*

13. *In Virginia*, an indorſee of a promiſſory note cannot maintain an action againſt a *remote* indorſer, for want of *privity*.
Mandeville v. *Riddle*, 290

14. *In Maryland*, *debt* will not lie on a promiſſory note.
Lindo v. *Gardner*, 343

15. Whether an action for *money had and received*, will lie by the holder againſt a *remote* indorſer of a promiſſory note *in Virginia*?
Dunlop v. *Silver*, 367

16. What was the law in England reſpecting promiſſory notes before the ſtatute of Anne?
Appendix, 368

17. At what time were *inland* bills of exchange conſidered as governed by the cuſtom of merchants?
id. 380

18. When were *inland* bills and *promiſſory notes* firſt introduced into England?
id. 385

19. Did the ſtatute of Anne introduce a *new* law reſpecting promiſſory notes, or did it only affirm the *old*?
id. 383

20. *Goldſmith's notes*.
id. 384

21. Form of declarations upon promiſſory notes before the ſtatute of Anne. *id.* 405

22. Is the contract of the indorſer of a promiſſory note an *expreſs*, or an *implied* contract?
id. 422

23. Are actions upon promiſſory notes in Pennſylvania, founded on the cuſtom of merchants, or on the ſtatute of Anne?
id. 459

24. Will an action of debt lie upon a promiſſory note?
id. 464

BILL OF EXCEPTIONS.

The court is not bound to give an opinion on an abſtract point of law,

* *See Ilderton* v. *Atkinſon*, 7 *T. R.* 421, *and Birt* v. *Kerſhaw*, 2 *Eaſt.* 460.

unleſs it be ſo ſtated as to ſhow its connexion with the cauſe.
Hamilton v. *Ruſſell*, 309

BILL OF SALE.

1. An abſolute bill of ſale of goods is fraudulent as to creditors, *unleſs poſſeſſion accompanies and follows the deed.*
Hamilton v. *Ruſſell*, 309
2. The want of poſſeſſion is not merely *evidence* of fraud, but is a circumſtance *per ſe* which makes the tranſaction fraudulent *in point of law.* *id.* *ib.*

BOND, FORTHCOMING.

In Virginia, a forthcoming bond is an appendage to the original ſuit, and is a component part of the proceedings.
Stuart v. *Laird*, 309

CAVEAT.

See Kentucky 2.

CHANCERY.

See Abſent Debtor. Equity.

CHOSE IN ACTION.

1. What is the meaning, extent, and effect of the rule that a *choſe in action* is not aſſignable?
Appendix, 423
2. Can a *choſe in action* be made aſſignable, or negotiable in its original creation, by the *contract and intention of the parties*, independent of the cuſtom of merchants, and of ſtatute law? *id.* 428

CITATION.

A citation muſt accompany the writ of error.
A writ of error not accompanied by a citation muſt be quaſhed, unleſs the defendant in error ſhould appear. *Lloyd* v. *Alexander*, 365

CITIZEN.

To give juriſdiction to the courts of the United States, the pleadings muſt expreſsly ſtate the parties to be *citizens* of different ſtates, or that one of them is an *alien*. It is not ſufficient to ſay that they *reſide* in different ſtates.
Abercrombie v. *Dupuis*, 343

CLERK.

The clerk of this court, muſt reſide and keep his office at the ſeat of government. He can not practice as attorney or counſel in this court.
Rules of Court, xv
How to make return of a writ of error. *id.* xvi
Not to ſuffer any record to go out of his office. *id.* *ib.*

COLUMBIA DISTRICT.

1. A Juſtice of peace in the diſtrict of Columbia is not removeable at the will of the Preſident.
Marbury v. *Madiſon*, 160
2. The acts of Congreſs of 27th Feb. and 3d March 1801, concerning the diſtrict of Columbia, have not changed the laws of Maryland and Virginia, adopted by Congreſs as the laws of that diſtrict, any further than the change of juriſdiction rendered a change of thoſe laws neceſſary.
U. States v. Simms. 252
3. Fines, forfeitures and penalties ariſing from a breach of thoſe laws are to be ſued for and recovered, in the ſame manner as before the change of juriſdiction, *mutatis mutandis.* *id.* *ib.*
See Adminiſtrator.

COMMISSION.

See Mandamus, 5, 6, 9, 10, 11, 12, 13, 14, 15.

CONGRESS.

1. Congreſs have not power to give original juriſdiction to the ſupreme court of the United States, in other caſes than thoſe deſcribed in the conſtitution.
Marbury v. *Madiſon*, 176
2. An act of Congreſs repugnant to the conſtitution can not become a *law*. *id.* *ib.*
3. A cauſe may by act of Congreſs be transferred from one inferior tribunal to another.
Stuart v. *Laird*, 299
4. Congreſs may conſtitutionally impoſe upon the judges of the ſupreme court of the United States the burden of holding circuit courts *id.* *ib.*

CONSTITUTION.

1. The ſupreme court of the United States, has not power to iſſue a *mandamus* to a *Secretary of State* of the United States, it being an exerciſe of *original* juriſdiction not warranted by the conſtitution, notwithſtanding the act of Congreſs.
Marbury v. *Madiſon*, 137
2. An act of Congreſs repugnant to the conſtitution can not become a *law*. *id.* 176
3. The *courts* of the United States are bound to take notice of the conſtitution.
id. 178
4. A contemporary expoſition of the conſtitution, practiſed and acquieſced under for a period of years, fixes its conſtruction.
Stuart v. *Laird*, 299
5. Congreſs may conſtitutionally impoſe upon the judges of the ſupreme court of the United States, the burden of holding circuit courts.
id. *ib.*

CONSTRUCTION.

See Conſtitution, 4. *Act of God.*

CONTRACT.

See Agent public. Admiralty 10. *Bills of exchange*, 22. *Choſe in Action.*

CONVENTION WITH FRANCE.

See Admiralty, 13.

COPY.

The keeper of a public record can not refuſe a copy to a perſon demanding it on the terms preſcribed by law.
Marbury v. *Madiſon*, 160

CORPORATION.

See Aſſumpſit, 3, 4.

Quere, whether an action on a policy of inſurance will lie againſt the Marine Inſurance Company of Alexandria, in their corporate name, or whether the declaration muſt be againſt the preſident alone.
Inſurance Company of Alexandria v. *Young*, 332

COSTS.

Quere, whether coſts can be awarded againſt the United States.
U. States v. *Simms*, 259
U. States v. *Hoxe*, 318

COVENANT.

See Aſſumpſit 8.

COUNSELLORS.

Counſellors ſhall not practice as attornies.
Rules of Court, xv
Their oath and qualifications.
id. *ib.*
May be admitted as attornies.
id. xvii

DEBT.

See Bills of Exchange 5.

1. An action of debt for £. 860 12 1 founded on a decree in chancery, is not supported by a decree for £. 860 12 1, *with interest from a certain day to the day of rendering the decree.* But the variance is fatal. *Thompson* v. *Jameson*, 282
2. Quere, whether *nil debet* is a good plea to an action of debt founded on a judgment of a court of one of the co-States? *id.* 285, 286
3. The declaration must be for the *whole* debt. Or if you declare for part you must show that the residue is satisfied. *id.* *ib.*
4. Debt will not lie upon a *promissory note* in *Maryland*. *Lindo* v. *Gardner*, 343
5. Will *debt* lie upon a promissory note? *Appendix*, 464

DEBTOR.

See Absent Debtor. Insolvent Debtor. Fraud.

A debtor may prefer one creditor to another, and convey goods to him in discharge of his debt. *Wood* v. *Owings*, 244

DECLARATION.

See Bills of Exchange, 1, 2, 3, 4, 5, 8, 15, 21. *Corporation. Debt* 3, 4. *Citizen.*

DEED.

1. Delivery is not necessary to the validity of letters patent, as it is to that of a deed. *Marbury* v. *Madison*, 178
2. *See Acknowledgment.*

DEPARTMENTS, HEADS OF.

See Mandamus, 7, 9, 10, 16, 17, 18, 19, 20.

DEPOSITION.

1. Evidence on motion to discharge bail, must be by deposition and not *viva voce.*—*Rules of court.* xvi
2. The plaintiff in error may show by affidavits that the matter in dispute exceeds the value of 2000 dollars. *id.* xvii

DISTRICT OF COLUMBIA.

See Columbia District.

ENTRY OF LANDS.

See Kentucky 1, 3.

EQUITY.

Subpœna in equity must be served 60 days before the return day.

If the defendant, upon such service, shall not appear, the complainant may proceed *ex parte*. *Rules of Court*, xvi

ERROR.

See Citation.

1. A writ of error lies upon a caveat from the district court of Kentucky district to the supreme court of the United States. *Wilson* v. *Mason*, 45
2. It is not error to reject, as incompetent, admissible testimony, tending to prove a fact not relevant to the case before the court. *Turner* v. *Pendall*, 117, 132
3. Quere, whether, in a case where there is no jury, a judgment ought to be reversed for the rejection of testimony which was admissible in law. Or whether the cause, in the appellate court, should be considered as if the testimony had been received. *id.* 132
4. Writ of error, how to be returned by the clerk below. *Rules of Court.* xvi

5. If the writ of error iſſues *within* 30 days before the meeting of the court, the defendant in error *may* enter his appearance and proceed to trial, otherwiſe the cauſe muſt be continued. *Rules of Court*, xvii
6. Where the writ of error appears to be brought for delay only, the judgment ſhall carry intereſt at 10 *per cent. per annum*, by way of damages. In other caſes 6 *per cent.*
id. *ib*
7. A writ of error does not lie from the ſupreme court of the United States to the general court for the Territory N. W. of the Ohio.
Clarke v. *Bazadone*, 212

EVIDENCE.

See Admiralty, 5, 6, 12.
1. Proceedings before magiſtrates in caſes of inſolvent debtors, under the laws of Virginia, are matters *in pais*, and may be proved by parol teſtimony.
Turner v. *Fendall*, 132
2. *See Error*, 2, 3.
3. A commiſſion is only *evidence* of an appointment.
Marbury v. *Madiſon*, 178
4. Quere, whether the drawer is a competent witneſs for the indorſer in an action againſt the latter?
Wilſon v. *Lenox*, 195
5. The want of poſſeſſion of goods by the vendee under an abſolute bill of ſale is not merely *evidence* of fraud, but is a circumſtance *per ſe* which makes the tranſaction fraudulent *in point of law.*
Hamilton v. *Ruſſell*, 309
6. Evidence on motion to diſcharge bail muſt be by depoſition, and not *viva voce.*—*Rules of Court*, xvi

EXCEPTIONS, BILL OF.

See Bill of Exceptions.

EXCHANGE, BILLS OF.

See Bills of Exchange.

EXECUTION.

1. Money made on a *fieri facias* does not become the *goods and chattels* of the plaintiff, until it has been paid over to him; while it remains in the hands of the officer he can not apply it to the ſatisfaction of another *fieri facias* againſt the former plaintiff.
Turner v. *Fendall*, 117, 136
2. By the command of the writ the officer is to bring the money into court, *there to be paid to the plaintiff.*
id. *ib.*
3. In Virginia, on a motion againſt a ſheriff for not paying over monies by him collected on execution, it is not neceſſary that the *judgment* againſt the ſheriff ſhould be rendered at the next term ſucceeding that to which the execution has been returned.
id. 117, 136
4. Money may be taken in execution, *if in poſſeſſion of the defendant.*
id. 134
5. Although the creditor ſhould have been diſcharged under the *inſolvent act* of Virginia, yet the motion againſt the ſheriff for not paying over monies made on a *fieri facias* muſt be in the name of ſuch creditor.
id. 132

FACTS, STATEMENT OF.

See Appeal 2.—*Admiralty*, 11.

FIERI FACIAS.

See Execution, 1, 2, 3, 4, 5.

FINES AND FORFEITURES.

See Columbia Diſtrict, 3.

FORTHCOMING BOND.

See Bond Forthcoming.

FRANCE.

See Admiralty, 11, 13.

FRAUD.

See Debtor.

1. An abſolute bill of ſale of goods is fraudulent as to creditors *unleſs poſſeſſion accompanies and follows the deed.* *Hamilton* v. *Ruſſell*, 309
2. The want of poſſeſſion, in ſuch caſe, is not merely *evidence* of fraud, but is a circumſtance *per ſe*, which makes the tranſaction fraudulent *in point of law.* *id.* *ib.*

HEADS OF DEPARTMENTS.

See Mandamus, 7, 9, 10, 16, 17, 18, 19, 20.

JEOFAILS.

A verdict will not cure a miſtake in the nature of the action.
Inſurance Company of Alexandria v. *Young*, 332

See Aſſumpſit 5.

INSOLVENT DEBTOR.

See Evidence 1. *Execution* 5. *Debtor.*

INSURANCE COMPANY OF ALEXANDRIA.

See Corporation.

INSURANCE, POLICY OF.

See Aſſumpſit, 3.

JUDGMENT.

See Aſſumpſit, 8. *Office Judgment.*

JUDICIARY.

1. A cauſe may by act of Congreſs be transferred from one inferior tribunal to another.
Stuart v. *Laird*, 299
2. Congreſs may conſtitutionally impoſe upon the judges of the ſupreme court of the United States the burden of holding circuit courts *id.* *ib.*
3. The courts of the United States may declare an act Congreſs to of be unconſtitutional. *Marbury* v. *Madiſon*, 137

JURISDICTION.

See Error, 1, 7.

1. The ſupreme court of the United States has not power to iſſue a *mandamus* to a *Secretary of State*, it being an exerciſe of original juriſdiction not warranted by the conſtitution.
Marbury v. *Madiſon*, 137
2. Congreſs have not power to give original juriſdiction to the ſupreme court, in other caſes than thoſe deſcribed in the conſtitution.
id. *ib.*
3. It is the eſſential criterion of *appellate* juriſdiction that it reviſes and corrects the proceedings in a cauſe *already inſtituted*, and does not create that cauſe. *id.* 175
4. To give juriſdiction to the courts of the United States, the pleadings muſt expreſsly ſtate the parties to be *citizens* of different ſtates, or that one of them is an *alien*. It is not ſufficient to ſay that they *reſide* in different ſtates,
Abercrombie v. *Dupuis*, 343
5. The plaintiff in error may ſhow by *affidavit* that the matter in diſpute exceeds 2000 dollars in value.
Rules of Court. xvii

JUSTICE OF PEACE.

See Columbia Diſtrict 1.

KENTUCKY.

1. Waſte and unappropriated land in Kentucky, in the year 1780, could

not be lawfully appropriated by *ſurvey alone*, without a previous legal *entry* in the book of entries.
Wilſon v. *Maſon*, 45
2. A writ of error upon a caveat lies from the diſtrict court of Kentucky diſtrict to the ſupreme court of the United States.
Wilſon v. *Maſon*, 45
3. A ſurvey in Kentucky, not founded on an entry, is a void act and conſtitutes no title whatever; and land, ſo ſurveyed, remains vacant and liable to be appropriated by any perſon holding a land warrant.
id. *ib.*

LANDS.

See Kentucky.

LAWS FOREIGN.

See Admiralty 5, 6.

LETTERS PATENT.

Delivery is not neceſſary to the validity of *letters patent*.
Marbury v. *Madiſon*, 178

LIMITATIONS.

Quere, whether the ſtatute of limitations can be given in evidence on the plea of *nil debet*.
Lindo v. *Gardner*, 343
Appendix, 465

MANDAMUS.

1. The ſupreme court of the United States has not power to iſſue a *mandamus* to a *Secretary of State of the United States*, (notwithſtanding the act of Congreſs) it being an exerciſe of *original* juriſdiction not warranted by the conſtitution.
Marbury v. *Madiſon*, 137
2. Congreſs has not power to give original juriſdiction to the ſupreme court in other caſes than thoſe deſcribed in the conſtitution.
id. *ib.*
3. An act of Congreſs repugnant to the conſtitution can not become a *law*. *Marbury* v. *Madiſon*, 176
4. The courts of the United States are bound to take notice of the conſtitution. *id.* 178
5. A commiſſion is not neceſſary to the appointment of an officer by the executive. *Quere.*
Marbury v. *Madiſon*, 178
A commiſſion is only *evidence* of an appointment.
id. *ib.*
6. Delivery is not neceſſary to the validity of *letters patent*.
id. *ib.*
7. The Preſident of the United States can not authorize a Secretary of State to omit the performance of thoſe duties which are enjoined by law. *id.* 160
8. A juſtice of peace in the diſtrict of Columbia is not removable at the will of the Preſident.
id. *ib.*
9. When a commiſſion, for an officer not holding his office at the will of the Preſident, is by him ſigned and tranſmitted to the Secretary of State, to be ſealed and recorded, it is irrevocable; the appointment is complete. *id.* *ib.*
10. A mandamus is the proper remedy to compel a Secretary of State to deliver a commiſſion to which the party is entitled.
id. 137
11. When a commiſſion for an officer is ſigned by the Preſident, the appointment is complete.
id. 157, 162
12. Neither the delivery of the commiſſion, nor its tranſmiſſion to, nor actual receipt by the officer, is neceſſary to the appointment.
id. 159, 160
13. Nor is the acceptance of the office neceſſary to the validity of the appointment. *id.* 161

14. The poſſeſſion of the commiſſion is not neceſſary to authorize the officer to perform the duties of the office. *Marbury* v. *Madiſon*, 160
15. When all the requiſites have been performed which authorize a recording officer to record any inſtrument, and an order for that purpoſe has been given, the inſtrument is, in law, conſidered as recorded, although the manual labour of inſerting it in a book kept for that purpoſe may not have been performed. *id.* *ib.*
16. The keeper of a public record can not eraſe therefrom a commiſſion which has been recorded, nor refuſe a copy to a perſon demanding it on the terms preſcribed by law. *id.* *ib.*
17. There are certain acts of a Secretary of State which are not examinable in the courts of juſtice. *id.* 166
18. He acts in two capacities. 1ſt, as the mere agent of the Preſident. 2d, as a public miniſterial officer of the United States. *id.* 166
19. Where the heads of departments are the political, confidential agents of the executive, merely to execute his will, in caſes where he poſſeſſes a conſtitutional or legal diſcretion, their acts are only politically examinable. *id.* 166, 170, 171
20. But where a ſpecific duty is aſſigned by law, and individual rights depend upon the performance of that duty, an injured individual has a right to reſort to the laws of his country for a remedy. *id.* 166
21. The propriety, or impropriety of iſſuing a mandamus, is to be determined, not by the office of the perſon to whom the writ is directed, but by the nature of the thing to be done. *Marbury* v. *Madiſon*, 170
22. It is the eſſential criterion of *appellate* juriſdiction that it reviſes and corrects the proceedings in a cauſe already inſtituted, and does not create that cauſe. *id.* 175
23. A mandamus may be directed to inferior courts. *id.* *ib.*

MARINE ORDINANCES.

See Admiralty 5.

MARYLAND.

See Bills of Exchange 14. *Acknowledgment.*

MONEY.

See Execution, 1, 2, 3, 4.

MONEY HAD AND RECEIVED.

See Bills of Exchange, 12, 15. *Privity.*

MOTION.

See Execution, 1, 2, 3, 4, 5.

NEUTRAL.

See Admiralty, 1, 8.

NIL DEBET.

Quere, Whether the ſtatute of limitations can be given in evidence on *nil debet*? *Lindo* v. *Gardner*, 343, 465

NORTH-WESTERN TERRITORY.

See Error, 7.

NOTARY PUBLIC.

1. Quere, Whether the acts of a notary public, who certifies himſelf to be duly commiſſioned and ſworn,

are valid, if he be duly appointed, but not actually ſworn in due form?
Fenwick v. *Sears*, 260
2. Whether, between contending parties, the certificate of a notary public that he is duly commiſſioned and ſworn, can be contradicted? *id.* *ib.*

NOTICE.

See Bills of Exchange, 11, 12.
Notice of an illegal act will not make it valid.
Wilſon v. *Maſon*, 45

NUDUM PACTUM.

Can there be a nudum pactum in *writing?* Appendix, 443

OFFICE JUDGMENT.

After the firſt term next following an office judgment in Virginia, it is a matter of mere diſcretion in the court, whether they will admit a ſpecial plea to be filed, to ſet aſide that judgment.
Reſler v. *Shehee*, 110

OFFICER.

See Mandamus, 5, 9, 11, 12, 13, 14, 15, 21.

OHIO.

See Error, 7.

PAYMENT.

See Bills of Exchange, 2, 4.

PENNSYLVANIA.

See Bills of Exchange, 23.

PLEADINGS.

See Bills of Exchange, 1, 2, 3, 4, 5, 8, 15, 21. *Corporation.*—*Debt* 2, 3, 4.—*Aſſumpſit*, 8.—*Citizen.*—*Nil Debet.*

POLICY OF INSURANCE.

See Aſſumpſit, 3.

POSSESSION.

See Bill of Sale.

PRACTICE.

See Bills of Exchange, 1, 2, 3, 4, 5, 8, 9, 10, 12, 13, 14, 15, 21, 23, 24.—*Bill of Exceptions.*—*Citation. Citizen.*—*Evidence* 1.—*Error* 2, 3.
1. In Virginia, after the firſt term next following an office judgment, it is a matter of mere diſcretion in the court whether they will admit a ſpecial plea to be filed to ſet aſide that judgment.
Reſler v. *Shehee*, 110
2. Money made on a *fi. fa.* does not become the goods and chattels of the plaintiff until it has been paid over to him; while it remains in the hands of the officer he can not apply it to the ſatisfaction of another *fi. fa.* againſt the former plaintiff.
Turner v. *Fendall*, 117, 136
3. By the command of the writ the officer is to bring the money into court, there to be paid to the plaintiff. *ib.*
4. On a motion, in Virginia, againſt a ſheriff for not paying over money by him collected on execution, it is not neceſſary that the *judgment* againſt the ſheriff ſhould be rendered at the *next* term ſucceeding that to which the execution has been returned. *ib.*
5. Money may be taken in execution if in the poſſeſſion of the defendant. *id.* 134
6. Although the creditor ſhould have been diſcharged under the inſolvent law of Virginia, yet the motion againſt the ſheriff for not paying over money made on a *fi. fa.*

must be in the name of such creditor. *Turner* v. *Fendall*, 132
7. Quere, Whether the statute of limitation can be given in evidence on the plea of *nil debet*? *Lindo* v. *Gardner*, 343, 465
8. The practice in the supreme court of the United States is to be conformable to that of the king's bench and chancery in England. *Rules of Court*, xvi
9. A statement of the case must be furnished to the court by the counsel on each side of a cause. *id.* *ib.*
10. Evidence on motion to discharge bail, must be by deposition and not *viva voce*. *id.* *ib.*
11. Subpœna in equity must be served 60 days before the return day. If the defendant, upon such service, shall not appear, the complainant may proceed *ex parte*. *id.* *ib.*
12. The plaintiff in error may show by *affidavit* that the matter in dispute exceeds the value of 2000 dollars. *id.* xvii
13. When the defendant in error fails to appear the plaintiff may proceed *ex parte*. *id.* *ib.*
14. If the writ of error issues *within* 30 days before the meeting of the court, the defendant in error may enter his appearance and proceed to trial; otherwise the cause must be continued. *id.* *ib.*
15. Where the writ of error appears to be brought for delay only, the judgment shall carry interest at 10 *per cent. per annum*, by way of *damages*. In other cases 6 *per cent.* *id.* *ib.*

PRESIDENT OF THE UNITED STATES.

1. A commission is not necessary to the appointment of an officer by the executive. *Marbury* v. *Madison*, 178
2. The President can not authorize a Secretary of State to omit the performance of those duties which are enjoined by law. *id.* 160
3. A justice of peace in the district of Columbia is not removeable at the will of the President. *id.* *ib.*

See Mandamus.

PRIVITY.

See Bills of Exchange, 13, 15.

Is privity necessary to support *indebitatus assumpsit* for money had and received? *Appendix*, 439

PROBABLE CAUSE.

See Admiralty, 3.

PROCESS.

1. Process shall be in the name of the President of the United States. *Rules of Court*, xv
2. Subpœna in equity must be served 60 days before the return day. *id.* xvi

PROMISSORY NOTES.

See Bills of Exchange, 1, 2, 3, 4, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24.

PROTEST.

See Bills of Exchange, 5, 7, 10.

PUBLIC AGENT.

See Agent Public.

RECORD.

1. When all the requisites have been performed which authorize a recording officer to record any instrument, and the order for that

purpose has been given, the instrument is, in law, considered as recorded, although the manual labor of inserting it in a book kept for that purpose may not have been performed.
Marbury v. *Madison*, 160
2. The keeper of a public record can not erase therefrom a commission which has been recorded, nor refuse a copy to a person demanding it on the terms prescribed by law.
id. *ib.*

RULES OF COURT.

See page xv.

SALE, BILL OF.

See Bill of Sale.

SALVAGE.

See Admiralty, 1, 2, 3, 4, 7, 8, 9, 10.

SECRETARY OF STATE.

See Mandamus, 1, 7, 9, 10, 16, 17, 18, 19, 20.

SHERIFF.

See Execution, 1, 3, 5.

STATEMENT OF FACTS.

See Admiralty, 11.—*Appeal*, 2.

SURVEY OF LANDS.

See Kentucky, 1, 3.

VARIANCE.

See Debt, 1.

VERDICT.

1. A verdict will not cure a mistake in the nature of the action.
Insurance Company of Alexandria v. *Young*, 332
2. After verdict, every *assumpsit* in the declaration is to be taken as an *express assumpsit*.
id. 341

VIRGINIA.

See Bills of Exchange, 1, 2, 3, 4, 5, 13, 15.—*Bond Forthcoming.*—*Absent Debtor.*—*Office Judgment.*—*Execution*, 3, 5.—*Evidence*, 1.

WITNESS.

See Evidence, 4.

WRIT OF ERROR.

See Admiralty, 12.—*Appeal*, 1, 2.—*Error*, 1, 4, 5, 6 7.